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4 || Attorney for Plaintiffs

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

TRINA ROADHOUSE, SCOTT ROADHOUSE,

Plaintiffs,

VS.

PATENAUME & FELIX, A.P.C. a foreign corporation, DOES I-V inclusive, and ROE Corporations VI-X, inclusive.

Defendants.

CASE NO.: 2:13-cv-0560-GMN-CWH

**PLAINTIFFS' MOTION FOR
LEAVE TO ALLOW THE LATE
FILING BY SEVEN MINUTES OF
THEIR MOTION TO STRIKE
DEFENDANT'S AFFIRMATIVE
DEFENSES**

AND ORDER

Plaintiffs Trina and Scott Roadhouse, by and through counsel, humbly requests the Court's forgiveness for not being able to complete the upload of Plaintiffs' motion to strike Defendant's affirmative defenses ("motion to strike") (Dkt #10) until 12:07 a.m., seven minutes past the midnight deadline for filing said motion.

19 Plaintiffs' attorney began the process of converting the motion and all of the
20 exhibits into .pdf documents at approximately 11:30 p.m. The conversion and upload
21 process for the amount of pages and exhibits that comprised the motion to strike usually
22 takes less than 10 minutes, so under normal circumstances, there should not have been
23 any issue with filing the motion before midnight.

Once the documents had been converted into .pdf files, Plaintiffs' attorney attempted to access the cm/ecf website. For some unknown reason, although Plaintiffs' attorney was able to get on the cm/ecf filer login page, the authentication dialog box was not accepting either the attorney's login identification or his password. He could not tell because each time he entered his correct login and password terms, and click the

1 “Login” button, the page would flash and then re-set, with an empty authentication
 2 dialog box again. It took more than fifteen minutes to troubleshoot the computer
 3 problem, and by the time it was corrected, it was almost midnight.

4 Plaintiffs’ attorney went through the e-filing sequence as quickly as he could, but
 5 by the time the e-filing was completed, the cm/ecf e-file confirmation page noted that
 6 the upload was completed seven minutes after midnight. The delay in getting the motion
 7 to strike filed was inadvertent and has not caused any hardship or prejudice to the
 8 Defendant (as the link to the completed motion, with all exhibits, will be waiting in
 9 defense counsel’s email in-box when he arrives this morning). *See O’Brien v. Napolitano*,
 10 2012 WL 423732, at *9 (N.D.Cal. Feb. 8, 2012) (Court excused lateness of filing of documents
 11 35 minutes after deadline for filing “[b]ecause the delay was minimal and [opposing party] has
 12 not demonstrated prejudice”); *Rogers v. Fukase*, 2011 WL 2939851, at *1 (D.Haw. July 18, 2011)
 13 (Court denied motion to strike two filings, one filed 8 minutes late, and the other 10 minutes
 14 after midnight, where there is no evidence of prejudice to opposing party); *Lopez v. United*
 15 *Parcel Serv., Inc.*, 2010 WL 728205, at *4 FN5 (N.D.Cal. Mar. 1, 2010) (Court overruled party’s
 16 objection to documents supporting a motion for summary judgment being filed as much as 46
 17 minutes after midnight, where it found no prejudice to opposing party’s ability to prepare an
 18 opposition and because the dispute should be resolved on its merits and all of the evidence the
 19 parties submitted should be considered); *Davis v. Joseph J. Magnolia, Inc.*, 640 F. Supp. 2d 38,
 20 41 FN2 (D.D.C. 2009) (Court overlooks the late filing by 10 minutes of opposition to a motion
 21 for summary judgment); *Hyperphrase Technologies, LLC v. Microsoft Corp.*, 56 Fed. R. Serv.
 22 3d 467, 2003 WL 21920041, at *1 (W.D.Wis. 2003) (Court forgives the tardiness of party filing
 23 its motion for summary judgment 5 minutes after the midnight deadline and supporting
 24 documents up to 1:11 after the deadline).

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CONCLUSION

Accordingly, Plaintiffs respectfully request that the Honorable Court show its leniency and allow the late filing by seven minutes of Plaintiffs' motion to strike (Dkt #10).

DATED this 24th day of September 2013.

Respectfully submitted by:

/s/ Craig Friedberg
Craig B. Friedberg, Esq.
4760 South Pecos Road, Suite 103
Las Vegas, Nev. 89121

Attorney for Plaintiffs

**DECLARATION OF CRAIG B. FRIEDBERG
SUPPORTING PLAINTIFFS' MOTION FOR LEAVE TO ALLOW THE LATE
FILING BY SEVEN MINUTES OF THEIR MOTION TO STRIKE
DEFENDANT'S AFFIRMATIVE DEFENSES**

I, Craig B. Friedberg, declare as follows:

1. I am the attorney for Plaintiffs Trina and Scott Roadhouse in the above-entitled action.

2. I am qualified and licensed to practice law in the State of Nevada and the United States District Court of Nevada.

3. I have personal knowledge of the matters stated herein and if called as a witness, I would be competent to testify as to the matters stated in this Declaration.

4. I finished drafting the motion to strike at approximately 11:30 p.m. on September 30, 2013.

5. At that time, I began the process of converting the motion and all of the exhibits into .pdf documents. The conversion and upload process for the amount of pages and exhibits that comprised the motion to strike usually takes less than 10 minutes, so under normal circumstances, there should not have been any issue with being able to file the motion before midnight.

1 6. Once the documents had been converted into .pdf files, I attempted to
2 access the cm/ecf website, at <https://ecf.nvd.uscourts.gov/cgi-bin/login.pl>.

3 7. For some unknown reason, although I successfully accessed the cm/ecf
4 filer login page, the authentication dialog box was not accepting either my login ID or
5 my password or both. What I do know is that each time I typed my correct login and
6 password terms, and click the "Login" button just below the authentication dialog box,
7 the page would flash and then re-set, with an empty authentication dialog box again.

8 8. Over the next fifteen plus minutes, I went through the sign-in sequence a
9 number of times, then exited the webpage and went back to it, to no avail. I then tried
10 clearing my browser's cache and temporary files directories. But that also did not work.
11 I next tried accessing the cm/ecf filer login page from some alternate browsers, but was
12 still unable to get past the login page.

13 9. Highly frustrated and seeing the clock moving inexorably toward
14 midnight, I decided to shut down all my open programs (which took a few minutes),
15 turn off and re-boot my cable modem (which provides my desktop computer with a hard
16 wire connection to the internet) and turn off my computer completely. When I re-
17 booted the computer, I was finally able to successfully login to the cm/ecf e-file website
18 and commence the upload to e-file the motion to strike.

19 10. By the time I was able overcome the computer problems, it was almost
20 midnight. I went through the e-filing sequence as quickly as I could, but by the time the
21 e-filing was completed, the cm/ecf e-file confirmation page noted that the upload was
22 completed seven minutes after midnight.

23 11. The delay in getting the motion to strike filed was inadvertent out of my
24 control. I do hope that the Court will review the above and find that it constitutes
25 excusable neglect, and request the Court not penalize the Plaintiffs for the time it took

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1 me to figure a way around the computer problems, and to forgive the late filing.

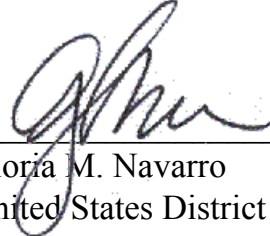
2 I declare under penalty of perjury that the foregoing is true and correct.

3 DATED this 24th day of September 2013, in Las Vegas, NV.

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5 /s/ Craig Friedberg
CRAIG B. FRIEDBERG

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9 **ORDER**

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11 **IT IS SO ORDERED** this 4th day of November, 2013.

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Gloria M. Navarro
United States District Judge

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